

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of BellSouth Telecommunications, Inc.)	
For Forbearance Under 47 U.S.C. §160(c) From)	WC Docket No. 04-405
Application of Computer Inquiry and Title II)	
Common-Carriage Requirements)	

**OPPOSITION OF
KINEX NETWORKING SOLUTIONS, INCORPORATED**

By:

James R. Garrett
President

KINEX NETWORKING SOLUTIONS, INC.
110 Fourth Street
Farmville, Virginia 23901
(434) 392-4804
www.kinex.net

Dated: December 20, 2004

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of BellSouth Telecommunications, Inc.)	
For Forbearance Under 47 U.S.C. §160(c) From)	WC Docket No. 04-405
Application of Computer Inquiry and Title II)	
Common-Carriage Requirements)	

Kinex Networking Solutions, Incorporated (“Kinex”), by its president, hereby submits its Opposition to the October 27, 2004, Petition for Forbearance filed by BellSouth Telecommunications, Inc.

STATEMENT OF INTEREST

Kinex was incorporated in January 2002, as a second ISP venture to serve the communities in Central Virginia, after the first one was sold in 2000, to an ILEC with CLEC and ISP subsidiaries. The members of the community asked that I start another ISP, because they were frustrated with the lack of personal service they received from the ILEC. At the end of my no-compete clause, I started such an ISP, but had a long-term goal of becoming a CLEC with a local fiber network providing triple-play services. My father worked for Centel for 35 years, so I was raised around the telephone industry and have high aspirations of creating a business much like the one of the past, which the telephone customers and employees loved and considered an asset to their community. I thought I could achieve this by initially providing services to generate revenue based upon the rulings of the Telecom Act of 1996, despite the efforts of the ILECs to prevent such competition.

As a service-oriented ISP, we quickly grew to be the largest provider in the community and were very positive about our business plan and the opportunities opened by the Telecom Act of 1996. Because there was no broadband in our area, we began to deploy fixed wireless, but it was still in its infancy and very problematic, therefore we spent the first year deploying very little as we waited for products to mature. In addition, the ILEC began to offer DSL, so we had little choice but to become a reseller in order to gain a portion of the market share before it was long-term contracted by the ILEC. We have since converted many of our DSL customers to fixed wireless, but this is not an end all solution. In 2003, we then began our process of becoming a licensed CLEC and achieved this status in April 2004, but have done little with it because of the uncertainty of court and FCC rulings and the ramifications thereof.

I. BELLSOUTH’S PETITION DOES NOT FACTUALLY SATISFY ANY OF THE
SECTION 10(a) FORBEARANCE CRITERIA; SO THEREFORE IT MUST BE
DISMISSED

The Commission may not grant BellSouth’s request for forbearance unless BellSouth has proven the explicit forbearance requirements set forth in section 10(a) of the Communications Act. In particular, BellSouth must demonstrate that the *Computer Inquiry* and Title II common-carriage requirements: (1) are not necessary to ensure that the charges and practices for broadband services “are just and reasonable and are not unjustly or unreasonably discriminatory;” (2) are not necessary “for the protection of consumers;” and (3) are not necessary to protect the public interest, and, in particular, that such non-enforcement will “promote competitive market

conditions” and “enhance competition among providers of telecommunications services.” If “any one of the three prongs is unsatisfied” the Commission must deny BellSouth’s Petition.

A. BellSouth uses statistical data that is very misleading and therefore justifies its standing that there is an unfair advantage for them in relation to the cable industry. The commission should require true and accurate statistical data of how many business broadband customers the ILECs have versus how many the cable companies have and it would be clear that the ILECs have an overwhelming advantage. All of the ILECs drug their feet in the deployment of DSL because it meant the loss of high-margin T1s and fractional T1s, which had a long profitable track record with their business customers. They in affect did not want to deploy DSL until they had garnished all of the possible revenue they could from high-margin circuits, which is an understandable business decision. In addition, many of the copper pair were plagued with load coils, making them problematic for DSL and could not be readily conditioned for deployment. With the limited 18,000 feet range of DSL, many DSLAMs had to be deployed and the ILECs are just beginning to qualify a large percentage of the population for broadband that the cable companies have been able to cover for the last several years. Now that the infrastructure is in place, the ILECs are rapidly gaining ground and will undoubtedly surpass the cable companies’ subscriber count in the next few years. When you begin to consider these facts and gather factual statistical data, the case that BellSouth makes is ridden with inaccuracies and should be seen for what it is. A blatant request to rid themselves of competition and the market forced element of good customer service and competitive pricing.

B. BellSouth states that there is competition in the broadband market, when in fact, the reality does not bare this out. Very few towns in our area have cable transport to the buildings in the business area, if they did, it would only allow the cable companies to compete

and we would have two major players that could easily manipulate the market. I approached the local Cable Company in 2003, in an attempt to gain access to their network and was politely told no. In fact, when Charter announced in a stockholder meeting that they might sell some of their smaller, less profitable offices, I called the office of the vice-president and was directed to his voice mail. I left a message for him to return my call and that I could possibly gather investors to purchase our local office, but the call was never returned. Broadband over power line is a very promising technology, but at this point it does not exist in our area. I have read and heard rumors that the local power company is testing it, but that does not assure me that a small ISP like mine will have any bargaining power if and when it becomes available.

C. BellSouth claims that the inequitable state of affairs is causing undue harm to the consumer, when there are no facts to substantiate this. The \$3.50 per customer per month to comply with Computer Inquiry is a small loss in comparison to the consequence of many businesses only having the option of the ILEC for their business connectivity, since cable and other technologies are not far-reaching into the business community. Consumers of our broadband service and the thousands of other small ISPs are very happy that they can get a quick resolution on their bill if needed, or that they can talk to a person that has some technical expertise when there is an issue. That same expertise is invaluable to the community and will only remain there if jobs are created and not lost and consolidated in cities far away from their homes. Our business customers appreciate having someone that understands their connectivity as it relates to their network and not having to call a large ILEC or ISP, then call a networking person and have the two spend the day placing blame until one figures out where the problem actually lies. They appreciate having someone that can explain a Virtual Private Networking Tunnel and how it can be used to securely connect remote users and offices. They appreciate

having local computer related jobs so their kids do not have to move three states away to work in a large building of cubicles answering computer related tech support questions. These jobs are important to our local economy and they help to induce creativity and innovation that ultimately helps the community as a whole.

At one point I believe that the ILECs assumed that given the predatory tactics they use, we would not remain in business long and they did not need forbearance. I believe we have since proven that we are a viable industry and businesses and residential consumers alike enjoy dealing with a smaller provider with friendly, customer-oriented service. If they did not, they would not be our customers, they have the choice of going to the ILECs but have made their choices clear.

II. SUMMARY

BellSouth and the other ILECs made choices that placed them in the current circumstances. Simple choices based on economics and basic market principles. They had \$1200 a month T1 circuits in place and to rapidly deploy DSL would have destroyed their high-margin market. This is always the case with new technology; the market leader is always the last to deploy money-saving products because deployment negatively effects their margins. Therefore, innovation comes from outside sources instituting competition and market-driven pricing and opportunities. We are just now reaching the point at which the ILECs have deployed a sufficient amount of DSLAMs to offer broadband services in many of the residential markets that cable has dominated for the last two years. Now is not the time for the FCC to squash the innovation and hard work of ISPs, now is the time for the FCC to monitor the progress and allow basic economics to work within the current market structure.

For some years after the Telecom Act of 96, I watched as the ILECs worked diligently to prevent competitive CLECs from gaining strongholds or any real market share in the dialtone market. (As a retired veteran of 21 years military service, I have been appalled at how the RBOCs could make concessions to our government in order for the Act to pass, then fight all of the concessions in court and the FCC after they received their rewards. This is not something that should happen, or be allowed to happen in the United States of America.)

I spent days, weeks, and months studying the soft switch industry, talking to their sales people, reading reviews, going to conventions and conferences and studying how those products were progressing in hopes of entering that market and bringing real customer service and competition to our local market. However, with the constant court cases and uncertainty projected from the FCC, I was unable to gain real financing and was certainly not going to base my family's livelihood on such uncertainties. I eventually decided that I would license a company as a CLEC, use revenues achieved through conventional ISP products and fixed wireless sales to help finance the deployment of DSLAMs, and start the growth of competitive telco services in my community in that manner. We bought several DSLAMs and two months later, before we could complete the engineering and application process with the ILEC, the FCC ruled against line sharing. Given the fact that TELRIC pricing has the cost of the local loop and cross-connect fees just over \$40 a month in our area, we have no opportunity for gradual market entry for the sale of DSL broadband, except as a re-seller.

Given the fact that the ILECs have achieved the recent FTTH and FTTC rulings, I am unclear as to why the FCC would grant forbearance if fiber and greater bandwidth for new technologies and innovation is the ultimate goal. The recent rulings give the ILECs free reign in the future marketplace and ample incentive to build out fiber and no longer contend with the

ISPs. To give them forbearance now will only reduce their incentive to build out fiber, will put the small ISPs out of business, reduce creativity and innovation, and reduce customer choices and therefore customer satisfaction.

An a small ISP and a CLEC, we realize that dependence on the ILEC network will be plagued with hurdles and obstacles that will make it impossible for us to ever achieve real success. Therefore, we are deploying fixed wireless broadband and are beginning to look at innovative and cost-effective means of deploying fiber. Because of the turmoil and uncertainty in the industry following the passage of the 96 Act, investment was lost and deployment of facilities and infrastructure has been slow and uncertain. I would ask that the FCC allow us more time in this turbulent marketplace to use our entrepreneurial skills and innovation to help grow the services and products that the American people want and deserve. I believe if the FCC would reinstate line-sharing and offer some real incentives for facilities based services, the deployment of broadband and competitive services will flourish in the United States.

I respectfully request that the FCC not grant forbearance to BellSouth as they have not met the burden of proof required by Section 10(a) Forbearance Criteria.

RESPECTFULLY SUBMITTED,

KINEX NETWORKING SOLUTIONS, INC.

By its President:

James R. Garrett
KINEX NETWORKING SOLUTIONS, INC.
110 Fourth Street
Farmville, Virginia 23901
(804) 392-4804
www.kinex.net